8

G. R. S. IX-5]

Previous references.

No 43-18 (11,12)

1919-20.

(P. P)

File No. 26-9

Serial Nos. 88

Later references.

GENERAL AND REVENUE SECRETARIAT.

Serial Nos. One only

Part B for February 1920

SUBJECT.

Export of food grains outside the State

D 1250—GPB—30,000 28-1-19

10/3/20

1073

(1

G. R. S. III—1] 1919-20

GENERAL AND REVENUE SECRETARIAT.

(P. P)

NOTES.

File No. 26

FILE HEADING.

Export of foodgrains outside the State

From

The Food Controller

No. A 4045 Dated 5/7. 2. 20 Received 9. 2. 20.

Diary No. 13807	Enclos. are Spare Copies. file.	Serial No. 88

BRIEF ABSTRACT OF LETTER.

Submits for info a copy of the Judgment of the Lessees Jagir. Shennoy in Appeal no 9 of 1920 on his file quashing the Convictn in fn unauthorized export of foodgrains on the ground that no penalty had been prescribed fn such unauthorized exports at

NOTES AND ORDERS.

the time of the occurrence -

Sub fn perusal - ~~Re Food Prosecute~~ ~~Reference and reply~~ As some doubt was felt whether sub rule (2)(b) of Rule 3 B empowered Govt to

NOTES—First Sheet.

G. R. S. III-2]

General and Revenue Secretariat. | P. P. File No. 26 of 1919.

Serial No.

prohibit exports as made the
State, a fresh Sub rule 2 (d) was
introduced -

The Judgement of the Sessions
Judge now received may be sent
to the Govt Advocate for re-
-marks.

Mg The judgment of the Sessions judge
17/2/20 appears to be quite sound.
For perusal. No action
necessary.

MK
17/2/20

(Chief Sec)

The Govt advocate may be
consulted. No.

Mg
20/2/20

No. 156
21-2-20.

Forwarded with compliments the Govt. advocate
for favour of remarks.

Byrde
Secretary
For Chief Sec

22803

21/2/20.

No. Mg 62/19-20
23/2/1920

I am of opinion that
the Sessions Judge's view is correct.
Rule 3 B (2) (b) does not prohibit
Exportation of any commodity
and

NOTE—Contn. sheet.

WD A 1799—GPB—60,000—20-3-13—S.

(3

G. R S. III-2]

General and Revenue Secretariat. | P. P File No. 26 of 1917

Serial No.

and the rule touching such Exportation was added only under Notification dated 3/2/19 This fact clearly confirms the position taken by the accused that his act did not amount to any offence under the rules, as there was no such prohibition till the 3rd Feb 1919.

Sd/- Shankaranarayana,
Govt. Advocate
23-2-20.

Sd/-
Reg
25/2/20
Chief Sec)

For perusal & orders,

Sd/- Illegible
25/2/20

Sd/-
26/2

Sd/-
26/2

CHIEF SECRETARIAT
II
POLITICAL BRANCH
27 FEB. 1920

NOTE—Contn. sheet.

4

IN REPLY REFER TO
NO. # 4045
ENCL. nil file

Tel : Address
"CIVISUP."

SECRETARIAT, POLITICAL BRANCH. 9. FEB. 1920

Office of the Food Controller and
Director of Civil Supplies in Mysore.

Bangalore, Dated.....5th...February.....192 0

13804
DIARY NO.....

DEPT. OF AGRI. & F.S. DIV. 9-FEB 1920 2 345

FROM

K. MATTHAN ESQ., B.A.,
Food Controller and Director of Civil Supplies in Mysore.

18/4/19 20
FILE NO 26-19

TO

C. S. Balasundaram Iyer, Esq., B.A.,
Chief Secretary to the Govt. of Mysore

Sir,

I have the honour to forward herewith for the information of Government a copy of a judgment of the Sessions Judge, Shimoga, in appeal No.9 of 1920 on his file quashing the conviction for unauthorised export of food grains on the ground that no penalty had been prescribed for such unauthorised exports at the time of the occurrence.

I have the honour to be,
Sir,
Your most obedient servant,

KM/MPH.

Food Controller & Director.

In the Court of Sessions, Shimoga Division, dated Shimoga the 16th January 1920

Present.

B. Subbanna, Esquire, B.A., B.L.,

Sessions Judge.

Petition of Criminal appeal No. 9 of 19-20 against the conviction and sentence passed by the Assistant Commissioner and 1st Class magistrate Davangere Sub Division under the Defence of India Regulation in Criminal case No. 64 of 18-19.

Vs.

Appeallant

Munigappa (Accused)

Judgment.

The accused was charged for attempting to export grain i.e. 70 bags of ragi on 13 carts from Davangere to Harapanahalli Sante on the night of 28th August 1918 without a license in contravention of Notification dated 6th August 1918 under the Defence of India Regulation.

2. The Magistrate found accused guilty and sentenced him to pay a fine of ₹ 250/- or in default to suffer simple imprisonment for 2 weeks.

3 (1) The conviction and sentence are against law and facts in as much as the act of the accused appeallant was not an offence at the time it was committed.

(2) The Notification dated 6th August 1918 imposing restriction on exports purports to be issued under sub rule 2(B), Rule 3 B is ultra vires in as much as the rule in question authorises Government to prescribe conditions of sale and regarding exports at all any disobedience the terms of such notification is no offence.

(3) The restriction on the export of ragi were actually imposed by the notification dated 15-2-19 long after the date 28-8-1918 of the act complained of

(4) The learned ~~Judge~~ magistrate erred in the following what are described as precedent.

(5) The sentence is too severe and out of proportion to the merits of the case, especially in view of the fact that the notification was not then known and the accused was acting in a bonafide and innocent manner.

(6) The decision is against law and facts and opposed to the probabilities of the case.

4. The appellant was charged by the Police on 11-4-1919 for having attempted on the night of 28-8-1918 to export 70 bags of of ragi to Harapanahalli. The facts which are not disputed now show that he was carrying all the ragi on 13 carts and was stopped outside the Town of Davangere. The prosecution stated that he attempted to export ragi in contravention of the rules ~~formed~~ framed under the Defence of India Regulation as introduced into Mysore On the 6th of August 1918 the Government of Mysore published a notification prohibiting the export of ragi and other grain out of the State without a license. This purports to be passed under sub rule 2(b) of Rule 3 B of the rules framed under the Defence of India Regulation and it should be under this that the appellant should be convicted if at all. Mr. Balakrishna Rao who appears who appears for the appellant contends that the Government had no power to pass this notification of 6th August 1918 as the provision of law under which it purports to be passed does not refer to prohibition of exportation but deals with other matters and sub rule 2(d) to rule 3 B was not then in existence. This sub rule 2(d) was put in on 3rd February 1919 and clearly enables

the Government to make rules to prohibit exportation of Food Stuffs; but as this was not in force on 6th August 1918, and there is nothing in it to give retrospective effect to it, it cannot be contended that the notification of 6th August 1918 was rendered valid by means of the insertion of this sub rule 2(d). Indeed the Government did not need the assistance of any of the rules framed under the Defence of India Regulation to make a valid rule preventing the exportation of food stuffs. It is not now contended that the Government had no power under the Regulation to make the rules that they have made in which we find sub rule 2(d) of rule B and it is quite easy to see that if the Government wanted to pass a rule prohibiting exportation of grain they could have passed one directly under the Regulation itself without previously making a set of rules enabling themselves to pass such a rule

The notification of 6th August 1918 was therefore a perfectly valid one though ~~th~~ it is an inappropriate provision of law that is quoted in it as the one under which it is made. Section 2 of the Regulation was wide enough for all such purposes. But as in the notification of 6th August 1918 there is no penalty prescribed for the contravention of the rule promulgated by it the prosecution has to rely upon the general body of the rules framed under section 2 of the Regulation for punishing the act complained of, there being no punishment independently prescribed in the Regulation itself for contravention of any rule passed under it. Therefore though we may hold that the notification of the 6th August 1919 was valid so far as it went we cannot punish a man who contravened it before 3rd February 19 under the General rules as the act of exportation was not one covered by these rules.

5. It may perhaps have been possible to have made out a case under Section 188 of the Penal Code but that is not the charge and this section requires proof of knowledge of the prohibition on

the part of the accused

The learned magistrate admits the force of the contention on part of the accused but feels bound in all consistancy to his previous decisions in such cases to convict the accused.

I hold therefore that the accused could not have been punished under rule 6(the only provision of law prescribing punishments) of the rules promulgated under the Defence of India Regulation and the conviction must be set aside. The fine if levied will be refunded.

Pronounced in open Court this 16th day of January 1920.

Sd/ B Subbanna,

Session Judge.

" C O P Y "

For Food Controller & Director of

Civil Supplies in Mysore.

B.S.R.